

FILED  
Clerk  
District Court

SEP 30 2008

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS

ANTONIO S. CAMACHO,

Plaintiffs

v.

COMMONWEALTH OF THE  
NORTHERN MARIANA ISLANDS,  
MARIANA PUBLIC LANDS  
AUTHORITY, successor to the  
Marianas Public Lands Corporation,  
and DEPARTMENT OF PUBLIC  
WORKS,

Defendants

Civil Action No. 05-0043

ORDER GRANTING MOTION  
FOR WRIT OF EXECUTION  
AND, IN THE ALTERNATIVE,  
FOR AN ORDER IN AID OF  
JUDGMENT

THIS MATTER is before the court on plaintiff's July 24, 2008, motion for a writ of execution or, in the alternative, for an order in aid of judgment.<sup>1</sup> Plaintiff is

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On August 26, 2008, two days before the hearing, defendants moved for and were granted an extension of time in which to file their opposition to plaintiff's motion. It was filed that day and plaintiff was given until September 11, 2008, to file a reply to the opposition. The court, in its order of August 28, 2008, indicated it would decide the motion on the filings before it, without oral argument.

1 represented by his attorney, Michael W. Dotts; defendants are represented by their  
2 attorney, Acting Commonwealth Attorney General Gregory Baka.

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4 The question before the court is whether plaintiff may enforce, through usual  
5 and ordinary means, the judgment that he obtained in this court against the  
6 Commonwealth and these Commonwealth agency defendants in the face of a  
7 Commonwealth statutory requirement that money to satisfy judgments must be  
8 appropriated by the Commonwealth Legislature, which the Legislature has not  
9 done.  
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12 The court answers in the affirmative, for the reasons set out below. First, the  
13 court will offer a brief review of the history of this dispute, from its initial stages.

14 As averred in plaintiff's complaint, and found by the jury to be true, the  
15 Commonwealth government took plaintiff's real property on February 28, 1992  
16 (Special Verdict Form ¶ 4 (Dec. 7, 2006)), for purposes of paving and widening a  
17 road.<sup>2</sup> In December of 2003, defendant Marianas Public Land Authority (through  
18 its successor, the Marianas Public Land Corporation), pursuant to a Commonwealth  
19 public law, made an offer to plaintiff to compensate him for the land that had been  
20 taken almost a decade before. The offer was rejected and an administrative appeals  
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25 Like the Due Process provision of the United States Constitution, which is  
26 itself applicable within and to the Commonwealth of the Northern Mariana Islands,  
the Commonwealth Constitution provides that "No person shall be deprived of life,  
liberty or property without due process of law." Art. I, § 5.

1 process ensued, but no decision had been issued by the time this lawsuit was filed:  
2 December 5, 2005. After trial, the jury returned a verdict in favor of plaintiff on  
3 December 7, 2006, and judgment was entered the next day in the amount of  
4 \$239,397.00, plus costs in the amount of \$1,352.50 pursuant to 28 U.S.C. § 1920.  
5 Thereafter, on January 8, 2007, defendants appealed to the U.S. Court of Appeals  
6 for the Ninth Circuit. Defendants' appeal was dismissed on August 31, 2007, for  
7 failure to file an opening brief. The matter lay dormant until the instant motion was  
8 filed.  
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12 Defendants' arguments in support of their position revolve around the theme  
13 of due respect for the separation of powers between the three branches of  
14 government. They urge the court to defer to Commonwealth law and agree with  
15 them that plaintiff has no means to enforce his judgment absent an appropriation by  
16 the Commonwealth Legislature.  
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18 The court begins by noting that the Commonwealth statute relied upon by  
19 defendants is limited by its very wording to judgments issued by the Commonwealth  
20 Superior Court. Defendants cite to Title 7, Commonwealth Code ("CMC") § 2254,  
21 which directs that payment of judgments rendered against the Commonwealth  
22 government pursuant to 7 CMC § 2251 are to be paid by legislative appropriation.  
23 Title 7, CMC § 2251, "Other Actions Against the Commonwealth Government,"  
24 provides in relevant part:  
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1 Except as otherwise provided in article 1 of this chapter (commencing  
2 with 7 CMC § 2201), actions upon the following claims may be  
3 brought against the Commonwealth government in the  
4 Commonwealth Trial Court<sup>3</sup> which shall have exclusive original  
jurisdiction<sup>4</sup> thereof:

\* \* \*

5 (b) Any other civil action or claim against the Commonwealth  
6 government founded upon any law of this jurisdiction or any  
7 regulation issued under such law, or upon any express or implied  
8 contract with the Commonwealth government, or for liquidated or  
unliquidated damages in cases not sounding in tort.

9 Thus, the court believes it could end its discussion here. However, as  
10 recognized by both parties, there is a much broader implication to the argument  
11 made by defendants.  
12

13 Defendants argue that the court must employ the balancing test which first  
14 appeared in *United States ex rel. Richards v. De Leon Guerrero*, 4 F.3d 749, 754 (9th Cir.  
15 1993). There, the U.S. Court of Appeals for the Ninth Circuit re-affirmed<sup>5</sup> that “it is  
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18 Section 4 of P.L. 6-25, the “Commonwealth Judicial Reorganization Act of  
19 1989,” changed the name of the court from Commonwealth Trial Court to  
20 Commonwealth Superior Court and indicated statutory references to “Trial Court”  
were henceforth to be read as “Superior Court.”

21 4

22 Although the issue is not before the court at this time, it is unlikely that  
23 Commonwealth law could work to divest this court of any aspect of its proper  
jurisdiction, absent a source in the Covenant. *See* “Covenant to Establish a  
24 Commonwealth of the Northern Mariana Islands in Political Union with the United  
States of America,” Act of Mar. 24, 1976, Pub. L. No. 94-241, 90 Stat. 263 (codified  
25 as amended at 48 U.S.C. § 1801 *et seq.* (2003)) (hereinafter “Covenant”).

26 5

*See Hillblom v. United States*, 896 F.2d 426, 429 (9th Cir. 1990) (“the authority of

1 solely by the Covenant that we measure the limits of Congress' legislative power" to  
2 affect the self-governance provisions of the Commonwealth. Trying to reconcile  
3 the sovereignty of the United States expressed in Section 101 with the "right of local  
4 self-government" negotiated by the Commonwealth in Section 103, the court there  
5 concluded that it was "appropriate to balance the federal interest to be served by the  
6 legislation at issue against the degree of intrusion into the internal affairs of the  
7 CNMI." *Id.* at 755.<sup>6</sup>

10 The balancing test used in *Richards* concerned application of a federal statute;  
11 here, it involves application of one of the most fundamental principles of both the  
12 U.S. and Commonwealth constitutions: that private property may not be taken for  
13 public purposes without just compensation being paid. The *Richards* court held that  
14 the balancing test was to be used to insure that the respective interests on the  
15 United States (Covenant sections 101 and 105) and the Commonwealth (Covenant  
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17 the United States towards the CNMI arises solely under the Covenant").

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21 It is this court's hope that the Ninth Circuit will someday re-visit the issue of  
22 its balancing test and its clarification in Section V of *De Leon Guerrero*. The court  
23 remains convinced that the structure of the Covenant sets out the mechanism by  
24 which all federal law became applicable within and to the Commonwealth on  
25 November 3, 1986, and that that conclusion finds support in Covenant Section 105.  
26 Having this court determine the applicability of federal laws within and to the  
Covenant to the CNMI on a case-by-case basis places the court in the untenable  
position of acting in a super-legislative capacity and substituting its judgment for the  
procedure agreed upon by the parties to the Covenant.

1 section 103) would be considered by the U.S. Congress when it passed legislation  
2 affecting the Commonwealth. The instant matter does not involve Congress'  
3 legislative authority in regard to the Commonwealth, and the *Richards* balancing test  
4 is not implicated.  
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6 However, if the court were required to balance the interests of its ability to  
7 enforce validly-rendered judgments versus the right of the Commonwealth  
8 Legislature to fulfill its statutory duties, the court finds that the balance tilts  
9 overwhelmingly in favor of protecting the independence of the federal judiciary and  
10 of providing federal litigants in the Commonwealth a meaningful, timely avenue to  
11 collect judgments.<sup>7</sup>  
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13 The court agrees with every noble sentiment expressed by defendants in their  
14 opposition: the three branches of government should work to maintain the ever-  
15 fragile equipoise of democracy. But the failure of the Legislature to fulfill its  
16 constitutional mandate does not, cannot, and will not prevent the court from taking  
17 *all* necessary steps to ensure that its judgments are enforceable. A court that cannot  
18 enforce its judgments must forever close its doors, as it will have become nothing  
19 more than an historical curiosity.  
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Defendants' assertion that the accrual of interest suffices to protect the  
judgment holder until the Commonwealth Legislature deigns to act offers scant  
comfort to those who have held a judgment for years and years.

1 Plaintiff's alternative motions are hereby granted. The court stays plaintiff  
2 from attempting to enforce the judgment until 3:30 p.m., Friday, October 24, 2008,  
3 to allow the parties to reach a mutually-agreeable method to pay the judgment. If  
4 no agreement can be reached within that time, plaintiff may pursue the remedies  
5 sought in his motion, including a writ of execution.  
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8 DATED this 30th day of September, 2008.  
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13 ALEX R. MUNSON

14 Judge  
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